

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Guidelines for Evaluating the )  
Environmental Effects of ) ET Docket No. 93-62  
Radiofrequency Radiation )

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**PETITION FOR RECONSIDERATION**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby petitions for reconsideration of certain aspects of the Order in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION**

In the Order, the Commission adopted new rules to govern the safety of radiofrequency ("RF") emissions from FCC-regulated transmitters. These rules greatly expand the number of cellular and other wireless facilities subject to routine evaluation and, therefore, impose significant new burdens on such carriers. Indeed, the procedures associated with determining which facilities are subject to evaluation, and how those evaluations should be conducted will only be known when the Commission releases the revised version of OST Bulletin No. 65. The Commission has nevertheless imposed an unrealistically short time frame for compliance with the new requirements that appears to be

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<sup>1/</sup> Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, FCC 96-326 (released August 1, 1996) ("Order").

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unrelated to the release of OST Bulletin No. 65, which is critical to beginning the mandated site evaluations.

Accordingly, AT&T requests that the Commission reconsider its decision to apply the new RF guidelines to all station applications filed after January 1, 1997. Given the fact that release of the revised version of OST Bulletin No. 65 is not expected until November or December, licensees will have virtually no time to digest the new information and perform the site evaluations. AT&T, thus, requests that the Commission delay the transition to the new rules until one year after OST Bulletin No. 65 is issued. At the very least, the Commission should extend its liberal waiver period until that date.

AT&T also asks for reconsideration of the Commission's determination that an individual licensee's responsibility for site-wide compliance is triggered if its transmitter produces field strengths or power density levels in excess of one percent of the exposure limits applicable to its particular facility. Determining site-wide compliance is an enormous obligation that should not be imposed on relatively low power operators who are trying to accommodate federal and local pressure to co-locate at existing sites. Rather, the Commission should raise the one percent figure to ten percent and should establish a reasonable distance from the antenna's center of radiation at which the threshold should be measured. In addition, the Commission should provide a limited definition of the word "site" for purposes of site-wide compliance.

#### **I. The January 1, 1997 Date for Transition to the New Rules is Unrealistic**

Until August 1, 1996, all cellular and paging licensees were "categorically excluded" from compliance evaluations because of the remote chance that they would exceed the

maximum permissible exposure ("MPE") limits. This categorical exclusion also exempted these licensees from responsibility for site compliance at multiple-transmitter locations. The Order changes this broad exclusion by requiring licensees to determine, on a site-specific basis, whether their facilities exceed certain power and height levels. Cellular and paging facilities operating at power levels above 1000 watts ERP and PCS facilities operating above 2000 watts ERP that are located on "relatively short towers or rooftops where access may not be restricted," are subject to "routine evaluations."<sup>2/</sup> If more than one set of facilities is located at a particular site, it is likely site-wide evaluations, which will require coordination with other licensees, will be necessary.

To the extent the new guidelines apply to existing facilities (and that is not entirely clear),<sup>3/</sup> the Commission greatly underestimates the magnitude of even the first step of this process. AT&T alone has more than 4500 transmitter sites and substantial research will be necessary before the company can even determine whether a particular facility is located on a

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<sup>2/</sup> Order at ¶ 86. AT&T asks the Commission to clarify that the certification requirement can be satisfied by including a statement of compliance in an application and, if no application is required, through retention of the statement in the operator's files.

<sup>3/</sup> In this regard, AT&T asks the Commission to clarify the compliance obligations of previously-authorized stations. While the Commission states that all licensees are expected to comply with the RF radiation rules, it suggests that existing stations may continue to operate their facilities in compliance with the RF limits that were applicable "at the time of licensing and authorization." Id. at ¶ 119. This implication is supported by the Commission's statement "that the new RF guidelines will apply to station applications filed after January 1, 1997." Id. at ¶ 112. AT&T's interpretation makes sense because, while compliance with the new regulations on a going-forward basis is achievable, applying the rules to existing stations -- especially those that were previously categorically excluded -- will impose an enormous burden on licensees within a very short time frame.

rooftop or a stand-alone tower. After that, evaluating the accessibility of each rooftop location will require site visits by trained engineers.

The next step -- determining the compliance of facilities not automatically excluded from routine evaluation -- is yet more daunting. First, this task cannot be commenced until the Commission releases OST Bulletin No. 65. The Commission acknowledges that "applicants may need to undertake significant analysis and study in order to comply with the new guidelines," and that "[d]etailed information, in the form of a revised version of OST Bulletin No. 65, would provide significant assistance to those attempting to comply with these new guidelines."<sup>4/</sup> In addition, the Commission asserts that the revised bulletin will include a detailed discussion on the various ways to accomplish compliance, including "restrictions on access, implementation of appropriate work procedures for personnel, incorporation of RF shielding, mounting of appropriate warning signs, control of time of exposure and reduction of power during periods when personnel or the public are present."<sup>5/</sup> Even if OST Bulletin No. 65 is released next week (which is unlikely), it is doubtful that licensees could review the new information, formulate processes and procedures, and institute a training program before January 1, 1997.

Second, the Commission fails to take into account the magnitude of implementing the compliance measures if retroactive compliance is required. In 1993, when AT&T (then McCaw Cellular Communications, Inc.) had approximately 1500 cell sites, it estimated that more than two years of field time would be required to conduct measurements for all of its

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<sup>4/</sup> Order at ¶ 114.

<sup>5/</sup> Id. at ¶ 88.

cellular base stations.<sup>6/</sup> The Commission now anticipates that 40 percent of all cellular facilities will not be automatically exempted under the new guidelines.<sup>7/</sup> Thus, AT&T will likely have to conduct field measurements at approximately 1400 sites. This would probably entail one third of a day for sites where only one antenna is located. At the majority of rooftop sites, however, there are likely to be multiple facilities, which will require coordination with other licensees and prolonged measurement periods to ensure that each transmitter is evaluated at peak loading. Because AT&T cannot begin the measurement process until the Commission releases OST Bulletin No. 65, it is evident that the process cannot be completed by January 1, 1997.

While the Commission stated it would be receptive to waiver requests on a case-by-case basis for a one-year period that began on August 1, 1996, it makes little sense to rely on the waiver process when so many licensees will be unable to comply with the underlying rule. Under the current policy, the Commission will be flooded with waiver petitions just prior to the New Year. To avoid this burden on the agency and licensees, AT&T requests that the Commission delay the effective date for implementation of the new RF guidelines until one year following the issuance of OST Bulletin No. 65. At the very least, the Commission should extend the liberal waiver period until that date.

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<sup>6/</sup> See Comments of McCaw Cellular Communications, Inc., ET Docket No. 93-62, at 14 (January 25, 1994).

<sup>7/</sup> Order at ¶ 68 ("Approximately 2,800 [out of 7,000] transmitting facilities will exceed categorical exclusion criteria and will require a determination of compliance with our new guidelines, based on calculations and measurements.")

## **II. The Commission Should Reevaluate the One Percent Trigger for Site-Wide Compliance**

Under the new RF exposure rules, when the MPE guidelines are exceeded in an accessible area as a result of emissions from multiple facilities, any licensee whose transmitters produce field strengths or power density in excess of one percent of its applicable MPE shares responsibility for bringing the area into compliance.<sup>8/</sup> Thus, even if a licensee's transmitters are well under the allowable MPE and even if they contribute very little to the overall power density, the licensee must prepare and file an Environmental Assessment and help bring the site into compliance if the one percent threshold is exceeded.

As noted above, site-wide compliance is likely to be extraordinarily burdensome. First, it is unclear what constitutes a "site" for purposes of the multiple facility rule. In urban areas, it is likely that numerous antennas will be placed on adjacent rooftops.<sup>9/</sup> Does each rooftop constitute a different site? What about the situation where separate clusters of antennas are located on one rooftop? AT&T suggests that OST Bulletin No. 65 define "site" as a limited radius around an antenna or group of antennas.

Second, because of the lack of any central database, identifying the licensees of nearby transmitters or their operating power and frequency may be very difficult. Even if this information is obtainable, determining whether a particular site, as a whole, meets the

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<sup>8/</sup> See 47 C.F.R. § 1.1307(b)(3). AT&T requests clarification of Section 1.1307(b)(1)'s use of the term "facility." AT&T seeks confirmation that the phrase "all co-located simultaneously operating transmitters of the facility" refers to the co-located transmitters of a multi-channel base station as opposed to all of the transmitters operated by different licensees at a particular site. *Id.* at § 1.1307(b)(1).

<sup>9/</sup> In fact, both the Commission and local agencies have urged licensees to co-locate facilities and local governments are steering applicants to existing transmitter sites.

applicable MPE limits is likely to require field tests of sufficient length to ensure that the peak loading condition of each facility is identified. Finally, the ability of a licensee to certify its "continuing" compliance at a multiple-facility site is not certain. Rarely does a licensee exercise any control over co-located sites and landlords are reluctant to lease to a licensee who requires notification or approval of subsequent installations. Thus, the licensee may not be informed about the addition of new transmitters or the modification of an existing transmitter that could result in site-wide non-compliance at a previously-complying site.

Because of the time and expense involved in determining site-wide compliance, a licensee's obligation to share in the process should not be so easily triggered. The Commission should raise the one percent threshold to at least ten percent. In addition, the Commission should establish a fixed distance at which the threshold should be measured. This makes sense because, although on an individual basis a particular facility may be far below the applicable MPE when measured from any accessible area, virtually all transmitters will fail even a ten percent test if evaluated arbitrarily close to the center of radiation.

In any event, the exceedingly low threshold adopted by the Commission undermines its objective of encouraging antenna co-location. With the entry of numerous new wireless competitors and the well-documented problems associated with obtaining local site approvals, the Commission and local governments have understandably encouraged parties to enter into tower and site sharing agreements. The burden of satisfying the multiple-facility RF exposure standards, however, will promote exactly the opposite behavior. Indeed, although it is very unlikely that a licensee would be able to obtain an exclusive arrangement with a

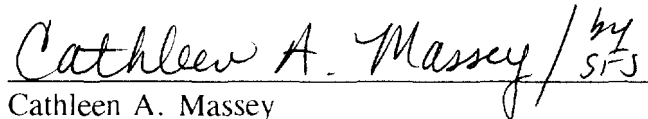
landlord, many would be willing to pay dearly for exclusivity in order to avoid the onerous total site RF compliance assessment requirements.

### CONCLUSION

For the foregoing reasons, the Commission should reconsider certain aspects of the RF Radiation Order, as detailed above.

Respectfully submitted,

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September 6, 1996



**CERTIFICATE OF SERVICE**

I, Tanya Butler, hereby certify that on this 6th day of September 1996, I caused copies of the foregoing "Petition for Reconsideration" to be sent by first-class mail, postage pre-paid or by messenger(\*) to the following:

  
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